

State of Wisconsin
Department of Agriculture, Trade, and Consumer Protection

NOTICE OF HEARING

Rule Related to Plant Pest Import Controls and Quarantine

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on its emergency rule, s. ATCP 21.17, Wis. Adm. Code, relating to the quarantine of Marquette County for the emerald ash borer.

DATCP will hold a public hearing at the time and place shown below.

Hearing Date and Location:

January 20, 2016
1:30 pm
Conference Room 212 (2nd floor)
Dept. of Agriculture, Trade & Consumer Protection
2811 Agriculture Dr.
Madison, WI 53718

DATCP invites the public to attend the hearing and comment on the emergency rule. Following the public hearing, the hearing record will remain open until January 29, 2016 for additional written comments. Comments may be sent to the Division of Agricultural Resource Management at the address below, to shahla.werner@wisconsin.gov or at <http://adminrules.wisconsin.gov>.

You can obtain a free copy of this hearing draft rule and related documents including the economic impact analysis by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Agricultural Resource Management, 2811 Agriculture Drive, P.O. Box 8911, Madison, Wisconsin 53708. You can also obtain a copy by calling (608) 224-4573 or emailing shahla.werner@wisconsin.gov. Copies will also be available at the hearing. To view the emergency rule online, go to: <http://adminrules.wisconsin.gov>.

Comments or concerns relating to small businesses may also be addressed to DATCP's small business regulatory coordinator Keeley Moll at the address above, by email to keeley.moll@wisconsin.gov, or by telephone at (608) 224-5039.

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by January 14, 2016, by writing to Barbara Stalker, Division of Agricultural Resource Management, P.O. Box 8911, Madison, WI 53708-8911, emailing barb.stalker@wisconsin.gov or by telephone at (608) 224-4660. Alternatively, you may contact the DATCP TDD at (608) 224-5058. The hearing facility is handicap accessible.

**Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection**

This emergency rule creates a quarantine for Marquette County for emerald ash borer (EAB). Under this rule, the Department of Agriculture, Trade and Consumer Protection (DATCP) quarantines Marquette County to mitigate the movement of emerald ash borer to other areas of Wisconsin and other states.

DATCP is adopting this temporary emergency rule pending the adoption of a federal regulation to quarantine Marquette County. The emergency rule will take effect immediately upon publication in the official state newspaper, and will remain in effect for 150 days. The Legislature's Joint Committee for Review of Administrative Rules may extend the emergency rule for up to 120 additional days.

Statutes Interpreted

Statutes Interpreted: ss. 93.07(12) and 94.01, Stats.

Statutory Authority

Statutory Authority: ss. 93.07(1), 93.07(12), 94.01 and 227.24, Stats.

Explanation of Statutory Authority

DATCP has broad general authority, under s. 93.07 (1), Stats., to adopt regulations to enforce laws under its jurisdiction. DATCP also has broad general authority, under ss. 93.07 (12) and 94.01, Stats., to adopt regulations to prevent and control plant pest infestations. Emerald ash borer quarantines created by this rule are part of an overall state strategy to prevent and control plant pest infestations, including EAB infestations. DATCP is adopting this temporary emergency rule, under authority of s. 227.24, Stats., pending the adoption of federal regulations on the same subject.

Background

The United States Department of Agriculture – Animal and Plant Health Inspection Service (“APHIS”) positively identified EAB in Marquette County in the town of Montello on July 29, 2015. This emergency rule creates a DATCP quarantine for Marquette County. Federal quarantines will be enacted approximately six to eight weeks after a formal submission by the state plant regulatory official. Emerald ash borer is carried and spread by untreated ash wood products. An eight-week delay until enactment of the federal quarantine leaves too much time for businesses or individuals to spread potentially EAB-infested material out of this county to areas of Wisconsin or other states that are not infested with EAB.

Emerald ash borer is an injurious exotic pest that now endangers Wisconsin's 770 million ash trees, comprising about 7% of our trees. This insect has the potential to destroy entire stands of ash, and any incursion of emerald ash borer can result in substantial losses both to forest ecosystems and urban trees, as well as the state's vital tourism and timber industries. The emerald ash borer, now considered the most destructive forest pest in North America, has killed over fifty million trees in the Midwest and cost several hundred million dollars annually in losses to the woodlot, nursery, landscape industries and municipalities. The United States Department of Agriculture predicts the national urban impact from this pest could exceed \$370 billion.

DATCP has plant inspection and pest control authority under s. 94.01, Stats., to adopt rules establishing quarantines or other restrictions on the importation into or movement of plants or other materials within this state, if these measures are necessary to prevent or control the spread of injurious plant pests. A quarantine order may prohibit the movement of any pest, or any plant, pest host or pest-harboring material, which may transmit or harbor a pest.

Emergency Rule Content

The emergency rule will do the following:

- Create a quarantine for EAB for Marquette County that prohibits the movement of all hardwood species of firewood, and nursery stock, green lumber, and other material living, dead, cut or fallen, including logs, stumps, roots, branches and composted and uncomposted chips of the genus *Fraxinus* (Ash wood), out of the contiguous quarantined area.
- Provide an exemption for items that have been inspected and certified by a pest control official and are accompanied by a written certificate issued by the pest control official (some products, such as nursery stock, cannot be given an exemption).
- Provide an exemption for businesses that enter into a state or federal compliance agreement. The compliance agreement describes in detail what a company can and cannot do with regulated articles.

Summary of Factual Data and Analytical Methodologies

Data for this analysis was obtained from DATCP nursery license records, local business directories and field surveys of the wood products industry (e.g. timber, lumber, firewood) in the area. This analysis was based on the regulatory language of ATCP 21.17 and 7 CFR 301.53, on the observations of DATCP nursery inspectors, and on conversations with stakeholders in the nursery and other timber-related industries.

Analysis and Supporting Documents used to Determine Effect on Small Business

DATCP searched its nursery license database to obtain current records for licensed nursery growers operating in Sauk County. Based on previous and ongoing work with Wisconsin's Gypsy Moth and firewood certification programs, DATCP staff also identified known saw mills, wood

products and firewood industry concerns. Finally, online Yellow Pages business listings were also searched to find related tree nursery, timber, firewood and tree service companies.

Fiscal Impact

DATCP will have additional workload related to enforcing the quarantine but it will be able to absorb the projected workload and costs within DATCP's current budget and with current staff. The presence of emerald ash borer may produce additional workload for local governments in Marquette County, but the quarantine itself will not produce any local fiscal impact.

Business Impact

This emergency rule may have an impact on persons or companies that deal in any hardwood firewood or ash materials in Marquette County. The affected businesses are all small businesses. This emergency rule restricts the sale or distribution of ash products plus any hardwood firewood from Marquette County to locations outside of any contiguously quarantined counties, and to neighboring states.

The business impact of this emergency rule depends on the number of nurseries that sell/distribute ash nursery stock outside the county, firewood producers/dealers that sell/distribute outside the county, saw mills that move untreated ash stock outside the county, and green wood waste that is moved outside the county.

Marquette County has a total of seven licensed nursery growers that could possibly be growing ash nursery stock. Those growers will not be able to sell ash nursery stock outside of the quarantine area, though discussions with the Wisconsin Nursery Association indicate that few, if any, nurseries continue to sell ash trees. There is also one known firewood dealer in Marquette County. Firewood dealers would need to be certified under s. ATCP 21.20 to sell firewood outside of the quarantine area. To obtain certification a firewood dealer pays a \$50 annual certification fee to DATCP and treats the firewood in a manner that ensures it is free of EAB. There are five sawmills in Marquette County and an estimated four other tree service/wood processing facilities that deal with ash. To sell ash wood products outside of the quarantine area they will need to enter into a compliance agreement with DATCP or APHIS that authorizes movement of ash products outside of the quarantine only when there is assurance that the movement will not spread EAB to other locations. Certification and compliance agreements will require some additional recordkeeping on the part of those businesses.

Environmental Impact

This emergency rule will not have a significant impact on the environment.

Federal and Surrounding State Programs

Federal Programs

Under the federal Plant Protection Act, APHIS has responsibility for excluding, eradicating and controlling serious plant pests, including emerald ash borer. APHIS has instituted statewide quarantines on the movement of all ash wood for Connecticut, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Virginia and West Virginia; in addition to portions of Arkansas, Colorado, Georgia, Kansas, Michigan, Minnesota, New Hampshire, Tennessee, and Wisconsin; and the entire District of Columbia.

APHIS has enacted quarantines for Adams, Brown, Buffalo, Calumet, Columbia, Crawford, Dane, Dodge, Door, Douglas, Fond du Lac, Grant, Green, Iowa, Jackson, Jefferson, Juneau, Kenosha, Kewaunee, La Crosse, Lafayette, Manitowoc, Milwaukee, Monroe, Oneida, Outagamie, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Trempealeau, Vernon, Walworth, Washington, Waukesha and Winnebago counties in Wisconsin. The quarantines include restrictions on the movement of any hardwood (non-coniferous) firewood.

Surrounding State Programs

Surrounding states where emerald ash borer has been identified (Illinois, Indiana, Iowa, Minnesota and Michigan) have state and federal quarantines that prohibit the movement of regulated articles out of quarantined areas. A regulated article can only move out of quarantined areas after it is certified by USDA or state officials.

DATCP Contact

Questions and comments (including hearing comments) related to this rule may be directed to:

Brian Kuhn or Shahla Werner
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-4590 or (608) 224-4573
E-Mail: brian.kuhn@wisconsin.gov or shahla.werner@wisconsin.gov